

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/772,439

Filing Date: February 5, 2004

Applicant: Leonard J. Gaik

Title: MUSIC DELIVERY SYSTEM

Examiner: Thuy-Vi Nguyen

Attorney's Ref.: 1685-2/AMK

**AMENDMENT**

In response to the Office action  
Dated: July 24, 2008

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, **Mail Stop Amendment**  
Alexandria, VA 22314  
U.S.A.

Dear Sir:

This is in response to the Office Action mailed January 24, 2008, to which a response is due with a three-month extension of time on July 24, 2008.

**RESPONSE**

REMARKS

This is in response to the Office Action mailed January 24, 2008.

The Examiner has objected to claims 1-10 as being indefinite. Applicant respectfully submits that the claims as written meet the requirements of 35 U.S.C. § 112.

The invention is a method that involves the sale of specified periods of time for which to play music in an operator's publicly accessible medium to a provider of music. A provider of music benefits by acquiring the right to promote its music by playing it in a public medium such as a sports facility. The method of claim 1 therefore involves the transfer of a right to play music to the provider of music since it is the provider of music who will be paying for the right to play music in the public medium.

The Examiner states that he interprets that the operator is providing music to the provider of

music. Applicant respectfully submits that is clear from a literal reading of the claim that it is in fact the provider of music who acquires the right to play his music in the public medium and then provides the music to the operator of the public medium once this right has been acquired.

The Examiner has objected to claims 1-30 as lacking novelty in view of U.S. patent application publication US 2002/0129693 to Wilks. Applicant respectfully submits that the claims are novel over Wilks in view of the following remarks.

The present invention is a method for conducting a transaction between an operator of a public medium and a provider of music. The method involves the sale of specified periods of time for which to play music in the operator's publicly accessible medium to a provider of music. The music can be in any of a number of different formats including recorded music, live simulcast musical audio and audio-visual content. During the period of time purchased, the provider of music is entitled to the public performance of such music within the owner's medium. The method allows the provider of music to achieve a promotion value in exposing the public to its musical products and artists while permitting the owner of the public space to avoid the costly and often inefficient methods of obtaining music that currently exist in the art.

Wilks discloses an apparatus and method for receiving, storing and playing music. The apparatus has a server for storing songs and a communication means for communicating with an interactive multimedia system for receiving from the interactive multimedia system a list containing one or more selected songs and transmitting the requested songs to the interactive multimedia system. Wilks' apparatus has a processing means for maintaining records of songs downloaded to the interactive multimedia system. The interactive multimedia system has a playing means for playing selected songs in a user-defined sequence and schedule. It also has processing means for maintaining records of songs played, and communication means for communicating with the server to send song requests and records to the server and to receive songs from the server.

Wilks does not address the need to provide music to owners of public media in a cost effective manner nor does it disclose or suggest the concept of offering a right to a provider of music to play its music in a public medium. Furthermore Wilks does not suggest any of the benefits of the present invention. In particular, Wilks does not disclose a method involving

the steps of purchasing from the operator of a public medium a right to play a selection of music in the public medium at a pre-determined time for a pre-determined length of time and selling the right to play music to the provider of music.

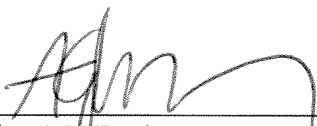
It is therefore respectfully submitted that the present invention is novel over Wilks.

Favourable consideration and allowance of this application are respectfully requested.

A Petition for an Extension of Time requesting an extension of three months for filing the subject response is attached. The Commissioner is authorized to charge any deficiency or credit any overpayment in the fees for same to our Deposit Account No. 500663.

Executed at Toronto, Ontario, Canada, on July 24, 2008.

Leonard J. Gaik

A handwritten signature in dark ink, appearing to read 'Adrian M. Kaplan', is written over a horizontal line.

Adrian M. Kaplan

Registration No. 43396

(416) 971-7202, Ext. 313

**Customer Number: 38735**